

E3JPKHAS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

10 CR 709 (GBD)

5 ISAAK KHAFFIZOV,

6 Defendant.

7 -----x
8 New York, N.Y.
9 March 19, 2014
2:07 p.m.

10
11 Before:

12 HON. GEORGE B. DANIELS

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: NIKETH V. VELAMOR

NICOLE W. FRIEDLANDER

18 Assistant United States Attorneys

19 JAMES KOUSOUROS

20 TONY MIRVIS

JEREMY SCHOLEM

21 DEBRA KOUSOUROS

Attorneys for Defendant

E3JPKHAS

1 (Case called)

2 MR. VELAMoor: Good afternoon, your Honor. Nick
3 Velamoor and Nicole Friedlander for the government.

4 THE COURT: Good afternoon.

5 MS. FRIEDLANDER: Good afternoon.

6 MR. KOUSOUROS: Good afternoon, sir. James Kousouris.
7 I represent Mr. Khafizov.

8 THE COURT: Good afternoon, Mr. Kousouros.

9 MR. MIRVIS: Good afternoon, your Honor. Tony Mirvis
10 also on behalf of Mr. Khafizov.

11 THE COURT: Good afternoon.

12 MR. KOUSOUROS: Judge, we're also joined by part of my
13 office, Ms. Kousouris is here and Jeremy Scholem is here.

14 MS. KOUSOUROS: Good afternoon, your Honor.

15 MR. SCHOLEM: Good afternoon, your Honor.

16 THE COURT: Mr. Kousouris, let me start with you.
17 Have you received a copy of the presentence report and had and
18 opportunity to review it with your client?

19 MR. KOUSOUROS: Yes.

20 THE COURT: Before I address the guideline range as
21 calculated, do you have any other corrections or objections
22 that you are making to the report itself?

23 MR. KOUSOUROS: No, your Honor, just those which we've
24 detailed in our submissions.

25 THE COURT: Then let me first start with, the last

E3JPKHAS

1 letter I received indicated, although I don't think I got an
2 acknowledgment by the government on that, the defense letter,
3 indicating that the government is not seeking certain
4 enhancements to the guideline. Let me first see if we can
5 resolve those and see how that affects the guideline range.

6 I think I was told that the government was no longer
7 seeking two points for misrepresentation that the defendant was
8 acting on behalf of a government agency, the 2B1.1(b)(9)(A); is
9 that correct?

10 MR. VELAMOOR: Yes, your Honor. We addressed that,
11 and I hope the Court received our sentencing memorandum.

12 THE COURT: Let's make sure I did. I have the
13 government's sentencing memorandum. Let me make sure the
14 sequence of events. The sentencing memorandum, no, I don't
15 think I do have it. When did you submit it?

16 MR. VELAMOOR: We dropped that off to chambers, I
17 believe, a week ago. Last Monday we dropped it off, along with
18 two volumes and an appendix.

19 THE COURT: Oh, yes. Yes, I do have that, but I don't
20 remember that those issues were addressed in there.

21 MR. VELAMOOR: They were not addressed in any detail;
22 so perhaps that's why, but we did indicate -- so to answer your
23 Honor's question, yes, we are not contesting the objection to
24 that enhancement.

25 THE COURT: Because the most recent thing I received

E3JPKHAS

1 was the March 17th letter from Mr. Kousouris that indicated
2 that you were not seeking that enhancement, and so I haven't
3 heard from the government since then.

4 MR. VELAMOOR: We previewed in our submission that we
5 would not be contesting that, and we continue to not be
6 contesting it.

7 THE COURT: So that would have been a two-point
8 enhancement, which would no longer apply.

9 Now, what about, it was also represented that the
10 government was not seeking abuse of a position of trust.

11 MR. VELAMOOR: That's also correct. As we wrote, we
12 are also not contesting that enhancement.

13 THE COURT: All right. So let me address the two
14 primary -- in my view, the two primary issues that I think
15 might warrant some adjustment, and then we can address the
16 others. The government was seeking a loss amount in excess of
17 \$400,000 and less than \$1 million, and 250 or more victims.
18 And, basically, the argument to that was the amount of revenue
19 generated or received by Mr. Khafizov and his entity and the
20 number of clients.

21 What I remember, and from the government's submission,
22 is that -- and what I find much more compelling, unless the
23 government, and I'll let the government be heard further, is
24 that the government represented that the government
25 specifically had identified more than 80 victims, who variously

E3JPKHAS

1 testified, had been interviewed by the government, or had
2 submitted personal statements regarding the impact of the
3 defendant's fraud on their lives.

4 And the government also represented that the
5 government has identified actual losses suffered by the more
6 than 80 trial witnesses and other victims who have made
7 statements in this case, of approximately \$230,000. Those are
8 the actual numbers that were attributed to victims and loss
9 attributed to those victims.

10 It seems to me that that would be the appropriate
11 number to use, and I'll hear the government further, if they
12 wish to press this further. But from my calculation, that
13 would be a 12-point enhancement for \$200,000 or more, but less
14 than 400,000; and a 80-victim enhancement, I think it is an
15 80-victim enhancement, of four points instead of six points.

16 I mean, I think that that doesn't seem, at least to
17 that extent, doesn't seem to be significantly in dispute on
18 this record, but I'll hear from the government as to whether or
19 not you believe that you could sustain a record that would
20 warrant a higher enhancement, or whether it's worth doing that,
21 and hear from Mr. Kousouros as to why he says, if he has any
22 arguments based on those representations, that those numbers
23 should be any less. Yes?

24 MR. VELAMOOR: We absolutely believe that the victim
25 number should be 250 or more and that the loss should be more

E3JPKHAS

1 than 400,000, and so I'll explain why. You know, first of all,
2 we have -- I want to take issue a little bit with how the Court
3 described the evidence with more than 80 and more than 400,000.
4 We're not simply relying on the revenues to the business, nor
5 are we simply relying on people who were clients of the
6 business.

7 We have identified more than 250 people who actually
8 paid money to the defendant or his business, and we've
9 identified the specific amounts of money they paid, and so
10 these are people who paid different amounts of money. We've
11 listed, you know, in our spreadsheet the exact amounts that
12 each one of those people paid. And we totaled that up, and you
13 get a number well in excess of 700,000; so this is not -- we're
14 not just simply estimating or guessing or speculating based on
15 the revenue of the business. These are actual payments by
16 victims.

17 THE COURT: Well, what I didn't have that went along
18 with that is whether or not any of these people did or did not
19 receive any services that led to or didn't lead to any
20 modification of their mortgage.

21 MR. VELAMOOR: Well, so let me address that in
22 specific ways. First of all, we have -- firstly, I don't
23 believe that's actually, frankly, relevant. Whether these
24 people got a modification or not is not relevant. This was, as
25 the Court pointed out at trial, as the Court instructed the

E3JPKHAS

1 jury at trial, this was a fraud in the inducement.

2 The fraud was lying to these people to get them to pay
3 their money to AHR. Whatever happened after that, however much
4 work was done after that, whether they got modifications after
5 that is irrelevant. That's what the law says. We cited cases
6 in our submission that support the fact that when you take
7 someone's money by lying to them, you can't make it better
8 after the fact by providing services to them. So on the first
9 fact, you know, whether or not they got modifications, I think,
10 is just a distraction. It's irrelevant. It doesn't really
11 matter.

12 Now, beyond that, on the facts, there's, frankly, no
13 reason to believe that many of these -- any real number of
14 these people got any modification. There was testimony about
15 that at trial, that virtually none of the people got any
16 modifications. They certainly didn't get them within the time
17 frames that they would get them. So there's virtually no
18 evidence that any substantial number of people got
19 modifications from the defendant.

20 On the contrary, there is evidence, substantial
21 evidence from the trial, that those people who decided to part
22 with their money and give it to AHR, did so based on fraudulent
23 statements. They were induced through fraud. There's a lot of
24 evidence in the record about that. First of all, there was,
25 for example, the fact that customers were brought in through a

E3JPKHAS

1 mass mailer. That mass mailer contained false statements.
2 This is not a one-off strategy that particular loan officers
3 were using. This was a mailer that everyone was. It was sent
4 out to many, many people, and many people responded to that.

5 There was also evidence at trial that scripts were
6 given to the callers at AHR, and those scripts contained
7 numerous false statements, false statements about the
8 modification being guaranteed, false statements about the
9 modification coming in between 30 and 60 days or maybe 90 days,
10 false statements about whether refunds were guaranteed.

11 There's testimony, there's evidence that Mr. Khafizov
12 approved these scripts, made the statements himself. Again,
13 this is not one off-things that particular people were saying.
14 This was the practice of the company that was set forth in
15 scripts that people were supposed to follow, and it all
16 contained lies.

17 So beyond that, you know, frankly, there's very little
18 reason to believe -- well, let me add to that that there's
19 direct testimony from witnesses at trial that American Home
20 Recovery was not even the first loan modification business. It
21 was the next-generation loan modification business after
22 Benjamin Modification Agency. Benjamin Modification Agency,
23 the defendant was a principal of that company. That company
24 was also a fraud. It was a failure.

25 We didn't consider any of those people as victims, but

E3JPKHAS

1 the crucial part is when they opened up AHR, they knew that
2 everyone they continued to tell the same false statements they
3 had been telling to Benjamin Modification's clients, could not
4 be true, but they continued to tell them anyway, and those were
5 lies. So we have every reason to believe that the only way
6 they got business was by lying to people.

7 We spoke to 80 people. We provided the Court
8 memorandums from all the interviews. We didn't hold any of
9 them back. You can tell from reading them that they were all
10 lied to in order to get them to part with their money, and so I
11 don't think it's difficult, or I don't think it's much of a
12 leap for the Court to estimate, which is all you need to do is
13 estimate, when you have a universe of hundreds and hundreds of
14 additional clients that we've identified, when you have bank
15 records confirming their payments that, you know, a little over
16 170 of these three, 400 additional people were lied to in order
17 to get them to pay their money.

18 THE COURT: I wasn't quite sure.

19 MR. VELAMMOOR: Let me -- Sorry.

20 THE COURT: I wasn't quite sure. There were a number
21 of individuals identified as victims where there's no loss
22 amount. How do you explain that, and what do you want me to
23 conclude from that?

24 MR. VELAMMOOR: Well, let me just say, first of all,
25 that you don't need to consider any one of those people as a

E3JPKHAS

1 victim in order to have at least approximately 300 victims
2 because, as we set forth in our papers, we've identified 300
3 people who were either interviewed or for whom we have
4 identified bank records showing that they specifically
5 personally paid money to AHR.

6 So the people who we have not attributed a loss
7 amount, those people are people who we identified through the
8 ACT database, which was the defendant's company's database of
9 customers. Those provided an additional universe of more than,
10 you know, 200 more, or at least 200, possibly more, possible
11 victims. And the Court, frankly, does not need to find any
12 single one of them to be a victim in order to meet the
13 threshold the government is seeking.

14 I think it's, frankly, hard to believe that at least
15 some of them and, frankly, probably most of them, were also
16 victims. It's impossible to believe that the defendant's
17 company would have provided services to anyone without taking
18 money upfront. That was a practice of the business. So in
19 order to provide an additional cushion for the Court in making
20 an estimate, which is all it needs to do, is make an estimate,
21 those additional 200 victims provide even more cushion to take
22 us even farther above the 250-victim threshold that we're
23 already at.

24 In terms of the losses, on the loss side of things,
25 again, we're not relying on a single dollar from those people

E3JPKHAS

1 to get way past 400,000. We're at 750-some-thousand just based
2 on victim interviews and bank records. We've attributed zero
3 amounts to all these people who were just identified through
4 ACTS. Again, I find it impossible to believe that these people
5 didn't pay money because AHR was not in the business of
6 providing services for free.

7 But, again, the Court doesn't need to count on a
8 single dollar from any of those additional hundreds of victims
9 in order to find at least 400,000 victims in this case.

10 Also, on the whole issue, and the last point I'll make
11 about, getting modifications, again, I want to stress I don't
12 think that's relevant. I think the law is very clear. If
13 you're induced to part with your money through fraud, you're a
14 victim, and these people were induced to part with their money
15 through fraud. But another important fact we learned at the
16 trial is where the defendant managed to get any success in
17 getting progress from banks, he generally, in many cases, did
18 that through additional fraud, through fraud on lenders,
19 through by creating false assets or false income.

20 So, you know, even if the Court were to believe that
21 that customer was not a victim, and I think it's very important
22 that they were, he made the bank a victim in those particular
23 cases, you know, whether the customer is a victim or not and,
24 again, the customer certainly is. And, frankly, this is an
25 allegation that I'm just not making here. This is a finding

E3JPKHAS

1 that the jury made when they convicted the defendant, not only
2 defrauding customers but also defrauding lenders. So this is
3 something that the government's proven not just beyond a
4 preponderance of evidence but also beyond a reasonable doubt.

5 THE COURT: What is the dollar amount that you
6 actually have computed?

7 MR. VELAMMOOR: This is what we've done, essentially, I
8 want to make sure I'm explaining what we've done. We
9 interviewed, our office interviewed more than 80 people.
10 We've, you know, figured out -- found out from them what their
11 losses were. In many cases we corroborated what they told us
12 through bank records. Where there was any small discrepancy,
13 we always took the lower number. From those 80 people, we
14 found more than \$230,000 in losses.

15 Then we went through the bank records for American
16 Home Recovery and for the defendant's company, IF Management
17 and Consulting. What we did not do is simply take a total of
18 all the money that went into those accounts. We did not do
19 that. We went through each check. We looked at only checks
20 that came from individuals. In many cases, or most, if not
21 all, cases individuals who were also found in the ACT database;
22 so that proved that they were clients of the company, and we
23 added the specific dollar amount that those particular people
24 paid to the defendant.

25 So we're not just taking the revenues of the company.

E3JPKHAS

1 We're getting payments from people who we believe, and who the
2 evidence shows are customers, and we're totaling those payments
3 as well. And when you total those payments, in addition to the
4 230,000, you have -- the total of those goes all the way over
5 700,000. You get approximately \$715,000; so that's, you know,
6 almost \$400,000 more loss specifically attributable to
7 particular victims.

8 Again, we've broken it out in our chart per victim,
9 and so we now have actual losses, not a projection, not an
10 estimate, actual losses of well over \$700,000. From this
11 evidence, we think that the only reasonable estimation of loss,
12 based on the evidence, is a loss well in excess of \$400,000.

13 THE COURT: Well, what is the number of victims that
14 corresponds to the dollar amount that you have set?

15 MR. VELAMOOR: The number of victims who correspond to
16 the dollar amount, okay, so the \$715,000 in losses corresponds
17 to approximately 300 victims. Approximately 80 -- more than 80
18 who were interviewed, plus an additionally approximately almost
19 200, around 200 more, gets you to about 300 people who we have
20 identified bank records. So the 705,000 corresponds to only
21 about 300 victims, which frankly, is consistent also with the
22 evidence that we had at trial, where the standard payment was
23 around two-or-so-thousand dollars, but the defendant managed to
24 hit certain victims up for even more and that accounts for the
25 additional.

E3JPKHAS

1 THE COURT: So you're going with the approximately 300
2 victim number?

3 MR. VELAMOOR: We think that, you know, at least
4 approximately 300, and then we have an additional, as I pointed
5 out, universe of almost 200 people who, again, we haven't found
6 a specific payment, but we've identified them in the ACT
7 database. If the Court wants a little bit more cushion, all it
8 needs to conclude is some small fraction of those people were
9 also victims, and then you're well above 300.

10 But, yes, I think the most conservative estimate of
11 victims is around the 300 people who made payments,
12 corroborated by bank records and people who have been
13 interviewed or provided statements to the Court.

14 THE COURT: And you say the amount of money in
15 payments, what did you use to accumulate the payment amount?

16 MR. VELAMOOR: What we did for the payment amounts
17 was, in the case of interviews, what people told us, and in
18 many cases, if not most cases, corroborated by bank records or
19 records that the witnesses gave us, plus again, going through
20 the bank records.

21 THE COURT: Which bank records?

22 MR. VELAMOOR: Bank records for AHR, American Home
23 Recovery and bank records for the defendant's company, IF
24 Management and Consulting. And going through the checks, you
25 know, one by one saying here's a check from Hector Ironez for

E3JPKHAS

1 \$1,995. We have a bank record that confirms that Mr. Ironez
2 paid AHR or IF Management \$1,995. So we add it to the list.

3 THE COURT: And is there any way that you identified
4 that that was, in fact, a payment from a customer?

5 MR. VELAMoor: Well, first of all -- Well, the fact
6 that that person was a customer?

7 THE COURT: Yes.

8 MR. VELAMoor: Most, if not all, of these cases we
9 double checked it with the ACT database to show that that there
10 was also a record for this person in the ACT database. Some
11 cases we weren't able to do that, in part, because of the
12 evidence established at trial. The defendant freelanced, in
13 many ways, and continued on his own under the IF Management
14 name; so they didn't always appear in the ACT database.

15 But there's also, frankly, no other explanation
16 because these are not businesses that are paying money to AHR.
17 There's no other reason why anyone would be paying amounts that
18 are entirely consistent with the fees that AHR was charging.
19 There's, frankly, no other reason why these people would be
20 paying money to AHR, other than for services rendered. This
21 was a simple business. The business was to supposedly provide
22 loan modifications for individuals. The money coming in from
23 individuals, I think, can very fairly be inferred to be
24 payments from customers and customers who were, frankly,
25 victims.

E3JPKHAS

1 THE COURT: And you went from what period of time?

2 MR. VELAMOOR: For the bank records?

3 THE COURT: Yes.

4 MR. VELAMOOR: The bank records, for essentially the
5 life of the business; so, you know, 2008, perhaps into 2009.

6 THE COURT: When you say the life of the business,
7 what --

8 MR. VELAMOOR: American Home Recovery and IF
9 Management Consulting for the time period that the defendant
10 was using that bank account. Again, the defendant was charged
11 with conspiracy. The time periods we relied on are within the
12 scope of the conspiracy in the charges.

13 THE COURT: Mr. Kousouros?

14 MR. KOUSOUROS: If it please the Court, good
15 afternoon, Judge. Judge, I think that your original
16 inclination was correct. In our memorandum, we -- in our
17 initial memorandum, we had argued that the government should be
18 held to the victims that testified at trial; however, I
19 understand, and I put in my subsequent submission that, given
20 the preponderance standard, let's look and see where there is
21 any actual proof.

22 Because the government's an conclusions and the work
23 that they did, as numerically correct or accurate as they may
24 be, still require the initial supposition that the crime was
25 committed with respect to all of these people. And that is, if

E3JPKHAS

1 you were to just say only the inducement and nothing else and
2 forget about the services that were rendered and the
3 modifications which were had, and I think that that was your
4 question initially.

5 If you take the people interviewed, and we've got
6 those interviews, some of them are not bad interviews, but if
7 you take all of the interviews, if you take 80-plus people and
8 the testimony of the victims at trial, and then you take the
9 commensurate amount that was paid by those people, at least you
10 have some evidence upon which you can rely. But quite frankly,
11 I think you first need to get past the issue of whether or not
12 the extrapolation process is even called for in this case.

13 I mean, an extrapolation, obviously, under Shonubi and
14 all of the cases that we've looked at, basically, it's a way
15 that this Court does not allow a defendant, for example, to get
16 away with something because it's such a huge and impossible
17 universe to look at, that you cannot discern what the actual
18 damage is. That's not what this case is. And I'm not saying
19 that it wouldn't be burdensome, but there are so many factual
20 issues here, so many other possibilities, that this is not a
21 case for which an extrapolation should be applied.

22 This is a case for which the Court should look at the
23 trial testimony, should look at those victims, which we've
24 acknowledged and accepted, and then look at the other
25 interviews, and you make your determination whether they

E3JPKHAS

1 satisfy the preponderance standard. There is no evidence,
2 there is no evidence, other than the government's supposition
3 here, that every single person that hired AHR did so having
4 been fraudulently induced. There isn't. You can say that
5 because it happened in these cases, it automatically happened
6 in those cases. It's not how we enhance punishment.

7 Now, granted, punishment can be enhanced under the
8 guidelines, the advisory guidelines from a preponderance
9 standpoint, but this is inappropriate in this case. Your
10 question is clearly a good question about the people who
11 received modifications. And I will say that I find it rather
12 interesting that the ACT records are good enough for the
13 government to rely in arguing to you that you should enhance
14 the sentence, but perhaps they're not good for other reasons.

15 We've given them to you. The fact remains is that in
16 my latest submission, you've got close to 60 to 65 people which
17 don't count IRA, which is the agency that Khafizov hired to
18 finish these files, well over 60 people that received
19 modifications or received repayment plans. There's no reason
20 to not believe that.

21 The other thing that you have to look at, because the
22 government keeps talking about witnesses. The witness upon
23 whom they relied in large part is David Cassuto. Now, the
24 other thing the ACT records also show, Judge, is that --
25 putting aside just for a minute the inducement, and I know that

E3JPKHAS

1 that's hard for you to put aside, and I know that, I recognize
2 that. You look at these reports, and you have got a company
3 that was hounding people for documents. You've got a company
4 that is calling banks, being put off by banks, being told that
5 banks lost the file, still staying with it, hounding people.

6 The government talks about, and puts at this fellow's
7 shoulders -- there's pain to be put at this fellow's shoulders,
8 don't get me wrong, but everybody's financial distress and pain
9 in this case is his fault. There are people who are being
10 hounded for documents, who then receive foreclosure notices,
11 then called AHR and said what's going on? And AHR looks at
12 them and says, of course you got a foreclosure notice. We've
13 been asking you for these documents for months.

14 So much has been made of the fact that Mr. Khafizov --
15 and it was in the government's initial sentencing memorandum --
16 you're not getting a modification unless your loan is late.
17 We've given you example after example about clients who would
18 call and banks who would say, we can't help them unless they're
19 behind. This entire industry was a mess.

20 And you know, Judge, from your time, that you had
21 victims, what are they going to say? I love AHR? That's why
22 we have trials. That's why witnesses testify. I get it that
23 it's a preponderance standard for the people who were
24 interviewed. I've got no reason to think that the agents in
25 this case lied in their reports, but at least you have some

E3JPKHAS

1 evidence that you can rely on and say, if you so decide that by
2 a preponderance of the evidence, I'm going to find you had 80
3 to 90 victims, by a preponderance of evidence, I'm going to
4 find that the money that those victims paid qualifies.

5 But the government says people didn't get refunds. A
6 lot of people got refunds. We have some names here. The
7 government says nobody got modifications. Upon what do they
8 rely? On David Cassuto? You know, I tried to walk a fine line
9 in my submission in this case, and I hope I didn't cross it
10 with you because I am not, in any way -- and this is a
11 defendant, who got convicted after trial, and you don't have
12 this very often. He is not minimizing his culpability. He is
13 not telling you he's not sorry.

14 But the notion that we're going to believe a man who
15 takes the stand and says that this company, from the minute
16 they walk through the doors of this Manhattan office, that
17 they're paying all of this rent for, was nothing but a sham, in
18 the face of these records that show all of the time and effort
19 put in? What I said in my initial memo, Judge, was that it was
20 an industry, and it's this industry, it's the mortgage
21 industry, it's the stock industry, and it's all bad, and we get
22 it, where you overpromise but then you try to deliver because
23 you want to succeed in your business. And that's really what
24 happened here.

25 But the notion that they're simply going to say that

E3JPKHAS

1 because these people say that they were lied to about certain
2 things, the entire universe of clients -- I heard the word
3 "approximately" and "maybe" how many times? It's not how we
4 take sentences and enhance them by point after point after
5 point. So if the Court is inclined to accept the fact of an
6 extrapolation being appropriate here, I think that where you
7 were kind of dividing it is appropriate.

8 And in terms of a preponderance standpoint, you've got
9 three leaps here. The government says, take the trial
10 witnesses, then take the witnesses that were interviewed, then
11 let's just put the whole ball of wax in and say it happened
12 with everybody. That's what happened in Uddin, which was cited
13 by the government in their submission, and the Court in Uddin
14 said you can't do that. Let's look at what you have some
15 evidence of. And quite frankly, as I put in my submission, I
16 think the showing in Uddin at a Fatico hearing with witnesses
17 testifying, was far more compelling than simply saying we took
18 bank records, we know this many people paid, we know this is
19 how much they paid, and now we're telling you, Judge, assume
20 that not a minority but a vast majority, or not a vast
21 majority, but a good amount of the people that puts us over the
22 edge of these guidelines, you should simply speculate had the
23 same thing happen to them that everybody else.

24 So with all due respect, I think that if you're
25 looking at it from a preponderance standpoint, I think that the

E3JPKHAS

1 Court's comments were on, and if you were to find that the
2 interviews that were conducted suffice, then what I would
3 respectfully submit is it is 50 -- it's over 50, not 80. It's
4 over 50 in order for a four-level enhancement, and that it's a
5 12-level enhancement on the money that the people that
6 testified at trial, as well as the people interviewed, were
7 counted.

8 THE COURT: Yes.

9 MR. VELAMOOR: Briefly. First of all, with
10 Mr. Cassuto, Mr. Kousouros didn't believe him, the jury
11 believed him because they convicted the defendant of
12 conspiracy. As Mr. Kousouros pointed out at length, the only
13 witness for a conspiracy was Mr. Cassuto, the defendant was
14 convicted of participating in the conspiracy. So in any event,
15 Mr. Cassuto's testimony should be believed, but more
16 importantly, we're not asking the Court to extrapolate.

17 Extrapolate would be the government presents you with,
18 you know, \$50,000 of losses with respect to ten people, and
19 then ask you to estimate going forward how much it would be for
20 a bunch of other people. We're not asking the Court to do that
21 in this case. We've identified specific losses for specific
22 people. And, again, there is specific evidence, not the
23 government's supposition but specific evidence, that these
24 people were induced through fraud, testimony at trial, that the
25 government didn't make up, about the fact that this was a

E3JPKHAS

1 follow up to a fraudulent business, that they knew it in
2 advance that they weren't going to give refunds. That was
3 testimony at trial. This is not just something I'm just saying
4 from this table.

5 There was mailers that went out on a mass basis that
6 went to as many disadvantaged homeowners as possible. This is
7 not something the government made up. This was a document that
8 was produced and provided in evidence. Scripts containing
9 false statements, testimony that those scripts were to be
10 followed by people calling customers. Again, this is not
11 something that the government is making up. This is evidence
12 that was offered at trial, and this evidence shows that when
13 these people became customers of AHR, they became customers of
14 AHR through fraud.

15 We're not asking the Court, even despite all that
16 evidence, which I think is far beyond preponderance, the Court
17 doesn't even need to find that every customer of AHR was
18 induced through fraud to be a victim. The Court only needs to
19 find a fraction of the people, additional individuals who have
20 been identified, beyond those who were in it in order to find
21 the 250-victim threshold.

22 And in terms of losses, the Court has specific losses
23 attributable to specific people, backed up by bank records, but
24 again, the government did not make up, confirming that these
25 people paid well more than 700,000, let alone more than

E3JPKHAS

1 400,000. So we think that there's, you know, more than
2 sufficient evidence to meet the government's burden of
3 establishing 250 victims and 400,000 in losses.

4 THE COURT: Mr. Kousouros, did you want to be heard
5 further with regard to the other adjustments enhancement?

6 MR. KOUSOUROS: The vulnerable victims?

7 THE COURT: Yes.

8 MR. KOUSOUROS: Judge, we will rely on our
9 submissions. The only thing I would point out is that, in
10 reviewing the materials that we had previously submitted, you
11 know, it's almost counter-intuitive because of the dictionary
12 definition of the term, and that's kind of troubling because
13 you look at people who are having trouble paying their
14 mortgage, and so I suppose you automatically say, well, they're
15 vulnerable.

16 And our only point is that we certainly acknowledge
17 that they are victims of this offense. It is our belief that,
18 based on Second Circuit case law, when you look at the Box case
19 and the bail bondsmen, you look at the Sutherland case with the
20 memorabilia, and these were elderly people, you look at the
21 Stoffer case, when you're targeting parents who want to adopt
22 children, and they're not found to be vulnerable. I think it
23 simply gives more voice and meaning to the particularly
24 vulnerable, susceptible language in the guidelines.

25 So while we certainly understand that they're victims

E3JPKHAS

1 that we believe that the enhancement is designed for those for
2 whom a far more particular and established vulnerability would
3 attach.

4 THE COURT: Did you want to be heard any further with
5 regard to the enhancement for being an organizer and leader of
6 criminal activity?

7 MR. KOUSOUROS: Judge, we've looked at the guideline,
8 and we do not believe that there's a viable argument on that
9 adjustment.

10 THE COURT: Mr. Velamoor, do you want to be heard on
11 those two?

12 MR. VELAMOOR: Just briefly, on the vulnerable victims
13 point. Again, I find it somewhat remarkable that the defendant
14 can cite Second Circuit law when the defendant has not
15 addressed the Second Circuit law that we cited in our papers,
16 which make it clear that financial vulnerability qualifies,
17 under the vulnerable victim enhancement, the Borst case and the
18 Harris case.

19 I believe Borris applied that enhancement in the
20 context of customers of a similar mortgage business and found
21 that people who are in financial trouble are vulnerable to
22 schemes like this. So I think the Second Circuit case law, I
23 think, is clear that the vulnerable victim enhancement applies
24 to people in financial distress who were victimized in a scheme
25 like this.

E3JPKHAS

1 The Court was present at the trial. Some time has
2 passed, but the Court was present at the trial, and saw these
3 people and they were clearly vulnerable victims.

4 The second point about vulnerable victims, another
5 argument that the defendant is not addressing is this whole
6 point about reloading. The Second Circuit law is also clear
7 that even if the person is not a vulnerable victim the first
8 time, when the defendant hits them up again for multiple
9 payments, that itself, by itself, qualifies for this
10 enhancement.

11 And that was some of the most powerful and, in many
12 ways, troubling evidence at this trial, where the defendant
13 would in his business, would take money from these people
14 initially, sit on their applications. And then when they got
15 desperate and called him, knowing that they were desperate,
16 hearing the desperation from them, he would then craft a new
17 lie saying, you know, if you give me some more money, it will
18 go to the mortgage lender, it won't go to me. And they gave
19 him the money, and he used it for his car and his other
20 personal expenses.

21 But that whole aspect about reloading is an entirely
22 separate basis for the vulnerable victim enhancement that
23 equally applies here, and it applies very powerfully on the
24 facts of this case.

25 THE COURT: With regard to the guideline range, I do

E3JPKHAS

1 believe adjustment in the guideline range is appropriate. I'll
2 start backwards. With regard to the adjustment for the role
3 adjustment, I think the role adjustment is appropriate and was
4 clearly supported here. I think, regardless of how one wants
5 to assess, you know, how the scheme began, who was involved in
6 it at the beginning, it's clear that for a substantial portion
7 of this criminal activity, that Mr. Khafizov acted as the main
8 person who was running these companies and this activity and
9 directed the activity of a number of people. I think the role
10 adjustment is appropriate.

11 I think that the volume of work that they were doing
12 clearly required supervision, and the number of people which
13 the evidence indicated and required a particular enhanced role
14 for Mr. Khafizov to be the organizer and leader in order to
15 make sure that the scheme pretended to be profitable and avoid
16 the scrutiny of law enforcement. So I think that that
17 enhancement, particularly given the significant role and very
18 little evidence, no evidence throughout most of this period
19 that there was anyone else who was a person who was in charge.

20 I think the defendant has already acknowledged that,
21 at some point, the others fell out of this activity, and he was
22 basically left to run what was a sophisticated criminal scheme,
23 which required assistance of others to process and collect fees
24 and to engage in the activity to keep this criminal activity
25 profitable and ongoing. So I think that that's an appropriate

E3JPKHAS

1 enhancement.

2 With regard to the vulnerable victims enhancement, I
3 think that is also clearly appropriate. In this case, not only
4 what I would describe the victims, particularly the victims
5 that testified at trial, not only will I describe as
6 financially vulnerable, I would have to describe many of them,
7 if not most of them, as desperate. They were, obviously,
8 individuals who were had no other recourse because of their
9 financial situation, other situations where they just had no
10 ability to save their homes.

11 They reached out to Mr. Khafizov and his companies,
12 based on their promises, to solve what, for most of these
13 people was the most serious problems that they had ever
14 encountered in their lives, and with the most serious
15 consequences that they ever confronted in their lives, being
16 thrown out of their homes and losing whatever investment they
17 thought they were originally making and in desperate straits,
18 to try to figure out how they could save their homes or even
19 locate another place to live.

20 And I think the evidence in this case was clearly
21 significant to demonstrate that many of these victims were
22 desperately seeking help from Mr. Khafizov and from his company
23 because they just could see no way out of the most serious
24 problems that they ever had, some of them. So I think that
25 that's an appropriate enhancement.

E3JPKHAS

1 With regard to the loss amount and the number of
2 victims, I'm going to stick with my calculation. I'm totally
3 confident, without making any further calculation of the
4 numbers that are, obviously, supported by both the testimony of
5 witnesses and interview of the victims, I think that that
6 clearly indicates victims way over 50, and I would say that
7 clearly at least somewhere in the 200 and very possibly
8 significantly greater than that, but I think on this record, I
9 think that it is sufficient and the record is clear and strong
10 that at least these numbers were clearly demonstrated by
11 interviews and/or the witnesses.

12 And I think that the numbers in excess of 200 are
13 clearly demonstrated, but I am not going to go beyond that to
14 make an assessment of whether each person who was a customer
15 was, in fact, quote, a victim and whether or not, in fact, they
16 suffered a loss or received any particular benefit from their
17 contact with this company and Mr. Khafizov.

18 Also, with regard to the loss amount, I think the loss
19 amount is clearly way over 200,000. I think that it's possibly
20 as high or higher than the government has indicated, based on
21 their calculations, but I think the record, as I say, is clear
22 here that, at least corresponding with the number of victims,
23 that I think the evidence clearly shows there were at least
24 references to Khafizov's criminal conduct consistent with those
25 numbers.

E3JPKHAS

1 I think, you know, some number that reflects those
2 numbers of victims is appropriate, and I think that number is
3 over \$200,000 and it's probably at least closer to the
4 \$400,000, and as I say, very possibly, based on the
5 government's reasonable calculations, significantly higher than
6 that. But I think it's consistent with the determination of
7 the lay witnesses and with the interviews of victims and the
8 documents that were clearly expended and the loss amount that
9 correspond to those numbers, I will make that adjustment in the
10 guideline range.

11 That being said, that would be, as it's indicated, the
12 12-point adjustment for loss amount instead of a 14-point
13 adjustment, a four-point adjustment for number of victims
14 instead of a six-point adjustment.

15 The government has conceded that they are withdrawing
16 and not going to seek an adjustment for misrepresentation of a
17 transaction enacted on behalf of a government entity, for abuse
18 of position of trust. Each of those were two-point
19 enhancements, and so that would be adjusted.

20 So given that, that would be an eight-point adjustment
21 to the guideline range, taking the offense level from a level
22 37 to a level 29, for a guideline range of 87 to 108 months. I
23 think that that is commensurate with the nature of this
24 offense, and that it does not overstate the conduct that was
25 proven at trial. So that, I'm going to adjust the guideline

E3JPKHAS

1 range to that number.

2 And let's go to the sentence. Does the government
3 wish to be heard first on the sentence?

4 MS. FRIEDLANDER: Yes, your Honor. Thank you.

5 THE COURT: Yes, Miss Friedlander.

6 MS. FRIEDLANDER: The Court heard the trial evidence
7 and has read our sentencing submission, and so I will be brief.
8 I just want to make a few points. The defense keeps asking you
9 to compare Mr. Khafizov to insider trading defendants. Just
10 two quick points on that. First, the Court, of course,
11 considers all the facts and circumstances of the case.

12 Your Honor knows the evidence in this case
13 particularly well because the Court sat through a two-week long
14 trial, and so I think you hardly need me to tell you that this
15 defendant is not like an insider trading defendant in many ways
16 especially because this defendant preyed on people in a very
17 personal way. The more victims trusted him, the more he came
18 back to them. He came back to them for more money by telling
19 them more lies.

20 You remember Mary Lou Perez, who testified at this
21 trial. She was the nurse in the neonatal ICU at St. Barnabas
22 Hospital in the Bronx. She called him when she got default
23 notices, foreclosure notices. Isaac Khafizov told her just
24 ignore them, and then he used the opportunity to trick her into
25 paying more money. She got a summons to go to court with

E3JPKHAS

1 respect to her foreclosure. She called him frantically. He
2 told her not to go to court. Again, he used the opportunity to
3 trick her into paying him more money. That is not what insider
4 trader defendants do. That is not what JP Morgan did when it
5 failed to deal with Bernie Madoff.

6 The fact that this defendant preyed on struggling and
7 vulnerable people is an important factor, in the government's
8 view, for the Court to consider in sentencing this defendant.

9 Mr. Kousouros, a few moments ago, said that this was
10 just a fraud where the defendant overpromised and
11 under-delivered, and I have to confess, I wondered if we sat
12 through the same trial when he said that. As the Court will
13 recall, after American Home Recovery collapsed, after Isaac
14 Khafizov parted ways with the Cassuto brothers, Isaac Khafizov
15 ramped up his fraud.

16 Overpromised and under-delivered? Isaac Khafizov
17 stole money outright from Bob McCarthy's bank account. Isaac
18 Khafizov told Pankaj Singh that he needed an upfront fee of
19 nearly \$1,300 for appraisal costs. That was just false. Isaac
20 Khafizov told Charles Decker that he was on the phone with
21 Mr. Decker's bank, and that the bank had approved the
22 modification and just needed an extra \$2,000, which Isaac
23 Khafizov would gladly forward onto the bank if Mr. Decker would
24 send it to him, and Mr. Decker did that. And that was a total
25 lie.

E3JPKHAS

1 Isaac Khafizov promised victim after victim that he
2 was doing things on their behalf that were just lies, and he
3 did it all to get more money from them. And as the Court will
4 recall, he used that money to pay off his Mercedes and to drive
5 his fancy Cadillac Escalade. And he committed this crime, in
6 sum, just out of pure greed. So I think the Court should
7 reject the argument that this is just a fraud where the
8 defendant overpromised and under-delivered. Thank you.

9 THE COURT: Mr. Kousouros?

10 MR. KOUSOUROS: What I said was that in this industry
11 and several other industries, the advertising pitches were to
12 overpromise and then try to deliver, try to come through in
13 order for the businesses to come through. I was at the same
14 trial, and it was as troubling for me in many ways, Judge, and
15 for many reasons.

16 You do need to think about Mary Lou Perez. You do
17 need to think about the witnesses that testified. That's part
18 of why we're here. And, you know, we've talked about the
19 guidelines and all of these numerical calculations, and now,
20 you also need to think about who this young fellow is. We're
21 not talking about, you know, discounting a fine. We're not
22 talking about small numbers here. There will be punishment in
23 this case.

24 You will consider the victims. You will consider the
25 offense, and oftentimes the government wants you to only

E3JPKHAS

1 consider that. But that's not what we're here for. We have
2 not asked you for a pass. We've asked you for what is
3 sufficient but not greater than necessary.

4 These comparisons, they're insulting. JP Morgan looks
5 away at what Madoff does. Madoff cripples people with a
6 \$100 billion loss. JP Morgan and its executives get a deferred
7 prosecution. If they prosecuted that case in front of this
8 honorable Court, oh, my goodness, would you be hearing about
9 those poor victims. If they prosecuted insider trading case
10 before this honorable Court, oh, my goodness, would you be
11 hearing about the havoc upon the little guy.

12 But we've cited other cases. But, guess what? He did
13 wrong, and we want you to consider that. But to speak from one
14 side in one case and then ask for a 13-year sentence or an
15 11-year sentence for a kid who's good at his core but just went
16 bad for a year, for whatever reasons, and then to say that's
17 not an insider trading case, that's not right either.

18 Now, I will also say, Judge, I was looking at 17-year
19 guidelines when I sent you that list. So I understand that the
20 numbers have gone down, but to say that other people aren't
21 victimized in those cases, it's wrong, and you'll never hear it
22 if you're presiding over those cases. That was my only point
23 in sending it to you, and again, I had 17-year guidelines,
24 which really scared me because that happens to be a human
25 being, as are the victims. Don't ever let anything I say to

E3JPKHAS

1 you signify that you shouldn't be thinking about them and,
2 believe me, I know you will.

3 I'm the only person that's going to talk to you,
4 besides him, that has spent any time with him, that knows more
5 than just the numbers. And I'm going to do my best here, and I
6 want you to ask for any information you need because I really
7 need to know that I'm telling you everything you need to know,
8 because this is the only time that he really gets to at least
9 present who he was and who he is and who he can be so you can
10 figure out what we, as a society, need to take with him, and
11 you need to take something from him.

12 He was a good kid. His family brought him here at age
13 five from Russia to flee from persecution, and they raised him
14 right, and he should be ashamed of himself, and he gets it.
15 His mother and father are here, and they were here every day at
16 trial. He worked from 14 years old with his dad, who's a
17 haircutter, and he was selling the lotions and the shampoos in
18 that place when he was in college when the Cassutos came and
19 said, What are you doing this for? He took the bait. He'll
20 pay for it. He's been paying for it, but he was a good kid.

21 He helped his family. He went to school, never did
22 anything, never ran afoul of the law. He's what we want when
23 we raise our kids. And so he got driven around in the
24 expensive cars that, Ms. Friedlander is right, he was an idiot
25 and went and bought for himself. We get all of that, but kids

E3JPKHAS

1 make mistakes. They go the wrong way, and then they get
2 carried away. And guess what? They pay. But he was a good
3 kid.

4 And aren't we trying to figure out what a defendant is
5 at his core? Because isn't that what is at least going to tell
6 us how much time you need to give him, and what's going to come
7 of him when he gets out because it's the core we hope reemerges
8 in an individual? That's what he was. And he was 20, or 18,
9 he was young. He wasn't a bad guy his whole life. He wasn't
10 some criminal who we just know is going to do it again. He was
11 a good kid.

12 He started making money with these guys. And what did
13 he do with the money? His father was in financial distress.
14 He helped him. He helped his parents buy a house. You know,
15 this is an important thing. You did not hear one shred of
16 evidence about what this guy did when he was making a lot of
17 money. His car, his houses, he didn't have any of that when he
18 was working in the mortgage industry.

19 He became more of a moron when he entered the
20 modification industry, when he wasn't making any money. His
21 company went broke, but he helped his parents buy a house, a
22 house they lost to foreclosure. He helped his brother. He
23 tried to get his father out of debt. He paid a lot of his
24 debt. You didn't hear of him squandering money on his own
25 stuff before this. He was a good kid. And now he's a broken

E3JPKHAS

1 man. And he can emerge with his core.

2 You know, I don't even know if I can get through the
3 next part of this because it just, it cripples me. That's his
4 wife. And it's sad because he loves her to no end, and he's
5 losing her. And through all the trial prep, I can't tell you
6 what they went through. She was pregnant, coming to the office
7 every day, out to here. You remember we started -- we were
8 going to start the trial. The two weeks before, they find out
9 the baby is not going to survive, and it's a horrendous
10 procedure.

11 He's known her since he's 12. Is that why maybe he
12 didn't listen and went to trial? I don't know. And now
13 they're falling apart. He's absolutely crushed, and still, he
14 takes classes in jail. He does what he can. He does
15 everything he can to better himself, and he does. He's
16 punished.

17 It is a sad case because this is a guy, he's a young
18 guy, who didn't need to go wrong. And if he didn't, he'd be
19 successful because he does have the gift of gab when he's got
20 the fortitude and the confidence to talk. And it's a shame.

21 So I do respectfully urge you, as I know you will, to
22 consider the victims, and some of it was really sad. I'm also
23 going to ask you to, and I know you will. He's not responsible
24 for all of their distress. Many of them put themselves in a
25 bad place. He didn't need to be there.

E3JPKHAS

1 But, Judge, I'm asking you, as well, to consider who
2 he was. You've heard nothing to the contrary and know that has
3 been going on, you know, for four years. It's taken a chunk of
4 his life, and to just, hopefully, get from it that when he
5 reemerges, and he will, what is inside him will come back out.
6 This is not a bad guy that we need to be scared of, and I am
7 telling you this is not a bad guy that we'll worry is ever
8 going to crush himself again in terms of recidivism.

9 Part of this was to talk to you about all the letters
10 you got. I'm not going to do that. They speak for themselves.
11 They say what I think I've hoped to convince you and that is,
12 he was a good kid. Even while going through this, this young
13 fellow over here had some real issues, and even while he was
14 going through all this, he helped him through it. And this
15 young fellow credits Isaac with that help. So I did get
16 through it.

17 I can't imagine this is an easy task. I'm asking you,
18 respectfully, to take your new guidelines which, believe me,
19 I'm very grateful for, the old ones were terrifying, and to
20 sentence him accordingly, based on what he did, who he did it
21 to, balanced with who he was and who he can be. Thank you,
22 Judge.

23 THE COURT: Yes, Ms. Friedlander?

24 MS. FRIEDLANDER: May I be heard just briefly on one
25 point, your Honor?

E3JPKHAS

1 THE COURT: Yes.

2 MS. FRIEDLANDER: Mr. Kousouros described the
3 defendant as a great kid and said that the Court didn't hear
4 any evidence that he had engaged in any other bad conduct prior
5 to the time he engaged in this scheme. We had evidence that
6 Mr. Khafizov engaged in mortgage fraud for years before he
7 started engaging in this scheme, and just to remind the Court,
8 we moved in limine to admit that evidence at trial. The Court,
9 for a number of reasons, precluded it, but certainly we do not
10 agree that this was a defendant who had not engaged in prior
11 criminal activity.

12 We're not asking for a Fatico hearing on this issue,
13 and we're not asking the Court to take our word, you know, to
14 consider what we're telling you in determining the sentence. I
15 simply want to state for the record that we disagree with what
16 Mr. Kousouros said, and we don't think that there is a basis
17 for the Court to conclude, simply based on Mr. Kousouros'
18 assertion, that this defendant has not previously engaged in
19 criminal activity.

20 THE COURT: The only question I had, Mr. Kousouros,
21 did you want to be heard any further at sidebar?

22 MR. KOUSOUROS: Yes.

23 THE COURT: Why don't you come up here.

24 MR. KOUSOUROS: Thank you, Judge.

25 (Pages 40 - 48 SEALED by order of the Court)

E3JPKHAS

1 (In open court)

2 THE COURT: Mr. Khafizov, is there anything you want
3 to say before I impose sentence?

4 THE DEFENDANT: Yes, sir. Your Honor, thank you so
5 much for giving me a chance to speak. I really want to talk
6 from my heart. I don't have much prepared, but I just want to
7 say that I'm not a bad person. I wasn't raised in a bad house.
8 I was not raised -- I was raised with morals. I was raised by
9 doing the right thing in my life, going to school and always
10 tried to be successful and tried to do the right thing for
11 people. I always tried my best to do the right thing for
12 everybody.

13 I've always worked since I was a teenager, to help my
14 parents. You know, the year that we came here, they were short
15 on finances; so I tried to do as much as I can to help them. I
16 wanted to go to school. I started college. I was going to go
17 to law school. And when I was around 18 years old,
18 unfortunately, I meet these two guys that were twice my age and
19 promised me the world, told me things that, you know, I'll be
20 able to help my family, to help my parents, show me a better
21 life, a life that I never had.

22 So I -- you know, I listened to what they had to say,
23 and I tried to make the right decision, but that was really the
24 worst decision of my life. They showed me a totally different
25 type of lifestyle with nice cars and houses and told me that

E3JPKHAS

1 all that could be mine. You know, I took them up on their
2 offer. It was really the worst mistake of my life.

3 I had nothing but regret so much. My family suffered
4 so much. People suffered so much. These victims suffered. My
5 wife has suffered so much. All I ever wanted was to have a
6 better life, a family, and married to my wife, to always have
7 children, raise them right. I wanted to get married to the
8 girl I loved all my life, since 12 years old. The next
9 morning, I got arrested by federal agents, right in front of
10 her. I didn't know what to say or do.

11 It has been the hardest thing for me ever since. When
12 I found out she was pregnant, it was the best day of my life.
13 It was so hard to go through everything. When I found out that
14 the baby was sick, I didn't know what to do or what to say. I
15 just remember sitting at night, holding her, trying to tell her
16 that everything was going to be okay, but not knowing what to
17 say. Two weeks before the trial, we were in the hospital and
18 the doctor said the baby is not going to make it; so we had to
19 get a termination done. The baby had a heart problem. Sorry.
20 I'm sorry.

21 I'm so sorry for everything. I'm so sorry to
22 everybody, the victims, my family, my wife. I'm losing the
23 best thing that ever happened to me too. I hope -- I hope that
24 I could go back out and show everybody that I'm a good person.
25 I'm not a bad person. I'm really not. I'm not. I'm sorry.

E3JPKHAS

1 Sorry. Thank you so much.

2 THE COURT: I've reviewed the presentence report. I
3 accept the factual recitations in the presentence report, and
4 I've adjusted the guideline range to a total offense level of
5 29, a criminal history category I. I have considered the
6 submissions on behalf of the defendant and the government and
7 the arguments made by both sides with regard to sentence,
8 considering all the factors in 18 U.S.C. 3553(a) relevant to
9 sentence.

10 In this case, I sat through a trial which indicated
11 that there were, as we've already discussed, desperate people
12 who were looking for someone to assist them in their lives to
13 better their situation that they had no ability themselves to
14 resolve. They reached out to this defendant. This defendant
15 took advantage of every one of those individuals. He showed a
16 callous disregard for the consequences of his criminal conduct
17 on the victims he swindled. And even up through the trial,
18 this defendant demonstrated no acceptance of responsibility
19 until after he was not able to avoid conviction at that trial.

20 I've considered all of the other issues in mitigation,
21 those issues and a consideration of all the factors have
22 convinced me not to go above the guideline range. Quite
23 frankly, I think it would be appropriate to go above the
24 guideline range. I think this was a most serious crime, with
25 numerous victims who suffered severely and dearly as a result

E3JPKHAS

1 of the defendant's own decision to put his interests in front
2 of theirs.

3 But I've decided not to go above the guideline range
4 in this case because I believe a sentence within the guideline
5 range, with a sentence at the top of the guideline range, is an
6 appropriate sentence in this case, given the serious nature of
7 the crime involved here and the serious consequences to
8 numerous victims.

9 I am going to impose a sentence of 108 months. I'm
10 going to impose three years of supervised release. I'm going
11 to impose a \$100 special assessment. This sentence is imposed
12 on Counts One through Four, to run concurrently with each
13 other.

14 I will order restitution. I'm going to order
15 restitution in the amount of just under \$400,000 in this case,
16 given the acceptance of the loss amount was within that range
17 and the number of victims that were actually determined, and my
18 assessment that we'd be lucky if that amount of money could be
19 recovered from this defendant and distributed to victims. Any
20 greater amount is unreasonable to expect that it is possible to
21 recover that amount for the victims to this case. The money to
22 be distributed to the victims on the basis that the government
23 believes is appropriate, given the identification of the
24 available names.

25 The mandatory conditions of supervised release are

E3JPKHAS

1 imposed. The defendant shall not commit another federal, state
2 or local crime. The defendant shall not illegally possess a
3 controlled substance. The defendant shall not possess a
4 firearm or destructive device. The defendant shall cooperate
5 in the collection of any DNA as directed by the probation
6 officer.

7 The standard conditions of supervision one through 13,
8 as recommended by the presentence report, are also imposed.
9 The special condition, the defendant shall provide the
10 probation officer with access to any requested financial
11 information and shall not incur any new credit card charges or
12 open any additional lines of credit without the approval of the
13 probation officer unless the defendant is in compliance with
14 the installment payment schedule.

15 The defendant shall also participate in a drug or
16 alcohol program approved by the probation office, which program
17 may include testing to determine whether the defendant has
18 reverted to the use or abuse of drugs or alcohol.

19 The defendant is to report to the nearest probation
20 office within 72 hours of his release from custody. The
21 restitution shall be made beginning 30 days after the defendant
22 is released from custody. It shall be made in payments, in
23 monthly installments of at least 20 percent of the defendant's
24 gross monthly income over the period of supervision and to
25 commence 30 days after his release from custody, or any other

E3JPKHAS

1 schedule set by probation commensurate with his ability to pay
2 and the availability of funds.

3 Defendant shall notify the United States Attorney for
4 this district within 30 days of any change of mailing address
5 or residence address that occurs while any portion of the
6 restitution remains unpaid.

7 Mr. Khafizov, you have a right to appeal this
8 conviction of sentence. If you wish to appeal any portion of
9 this conviction of sentence, you should discuss it immediately
10 with your attorney in order to preserve your right to appeal.
11 A notice of appeal must be filed on your behalf within 14 days
12 of entry of today's judgment.

13 Is there anything further by the government?

14 MR. VELAMoor: Just a few housekeeping matters. The
15 Court indicated that it was ordering restitution in an amount
16 somewhat less than 400,000. Is the Court willing to set a
17 specific number, since that's a range that I'm not sure that
18 might translate to the restitution people.

19 THE COURT: It's going to be one dollar less than.

20 MR. VELAMoor: In the terms of special assessment, the
21 Court indicated \$100 special assessment. I believe there were
22 four counts of conviction.

23 THE COURT: On each count, for a total of \$400.

24 MR. VELAMoor: There's an underlying indictment, which
25 the government would move to dismiss.

E3JPKHAS

1 THE COURT: That application is granted.

2 MR. VELAMOOR: And, lastly, with respect to
3 forfeiture, we'd ask the Court to orally order forfeiture and,
4 as appropriate, the government will submit an order to the
5 Court after sharing it with Mr. Kousouros.

6 THE COURT: And you want an order of forfeiture of the
7 same amount, or are you going to argue for --

8 MR. VELAMOOR: Yes. I think it's likely to be the
9 same amount, while we'll discuss it and share with
10 Mr. Kousouros and provide it to the Court.

11 THE COURT: I will order forfeiture in that same
12 amount. Anything further, Mr. Kousouros?

13 MR. KOUSOUROS: Your Honor, just two things. We would
14 ask for a designation close to the New York area, and as in our
15 submission, your Honor, there were significant issues with
16 respect to Mr. Khafizov's medicating for quite some time prior
17 to trial and actually leading up to trial. We would ask that
18 your Honor recommend the drug program, if he's eligible.

19 THE COURT: While he's incarcerated?

20 MR. KOUSOUROS: Yes.

21 THE COURT: Okay. All right. I have ordered that
22 during supervised release. I will order that he participate in
23 the drug program, to the extent that he's, obviously, willing
24 to participate and be eligible for the program in the facility,
25 if he wishes. I will recommend that he be housed at a facility

E3JPKHAS

1 closest to the New York City area.

2 MR. KOUSOUROS: Thank you.

3 THE COURT: That's the sentencing.

4 MR. VELAMOOR: Thank you, your Honor.

5 MS. FRIEDLANDER: Thank you.

6 (Adjourned)